

**MINUTES OF THE  
CITY PLANNING COMMISSION  
SPECIAL MEETING  
DECEMBER 7, 2005  
J. MARTIN GRIESEL CONFERENCE ROOM  
TWO CENTENNIAL PLAZA – SUITE 700  
805 CENTRAL AVENUE**

**CALL TO ORDER**

Mr. Faux called the meeting to order at 4: 08 pm.

**Commission Members:**

***Present:*** Caleb Faux, Terry Hankner, Donald Mooney, David Rager, and James Tarbell

***Members Absent:*** Jacqueline Mc Cray, and Curt Paddock

**Community Development and Planning Staff:**

Margaret Wuerstle, Renee Christon, Felix Bere, Steve Briggs, Adrienne Cowden, Caroline Kellem, and Rodney Ringer

**Law Department:**

Julia Carney and Dottie Carmen

**APPROVAL OF MINUTES**

Submission of the minutes from the November 18, 2005 Planning Commission meeting for approval.

<b>Motion:</b>	Mr. Mooney motioned approval of minutes.
<b>Second:</b>	Ms. Hankner
<b>Ayes:</b>	Faux, Hankner, Mooney, and Rager
<b>Nays:</b>	None, <b>motion carried</b>

**CONSENT ITEMS**

- ITEM #1** A report and recommendation on an ordinance authorizing the sale of property at the northwest corner of the intersection of Rockdale and Forest Avenues, near Reading Road, next to the Peace Baptist Church, which real property is no longer needed for any municipal purpose.
- ITEM #2** A report and recommendation on the sale of City-owned property located south of the Gregory Center Banquet Hall on Pete Rose Way, including part of Friendship Street, which is no longer needed for municipal or street purposes, to Montgomery Inn, Inc., and, in exchange, accepting .330 acres of land on the north side of Pete Rose Way.
- ITEM #3** A report and recommendation on an emergency ordinance to dedicate, accept and confirm the dedication of 20,365 square feet of city-owned property as public right-of-way as an addition to Queen City Avenue.
- ITEM #4** A report and recommendation on an emergency ordinance to dedicate, accept and confirm the dedication of 6.1414 acres of city-owned property as public right-of-way to be known as Queen By-pass and 6, 061 square feet of city-owned property as public right-of-way to be known as Lick Run Way.

**ITEM #5** A report and recommendation on an easement for a driveway, in favor of property located at 3179 Fiddlers Green Road owned by James E. Treft, over City of Cincinnati owned real property retained by the City of Cincinnati.

**Motion:** Mr. Mooney motioned approval of Consent Items #1-5

**Second:** Mr. Rager

**Ayes:** Faux, Hankner, Mooney, and Rager

**Nays:** None, **motion carried**

**Mr. Tarbell arrived at 4:10 pm.**

### **DISCUSSION ITEMS**

**ITEM #6** A report on a zoning study of the Red Bank Corridor from the Interstate 71 ramps to the City border with City of Fairfax.

*Steve Briggs, Senior City Planner, presented this report*

### **BACKGROUND:**

On July 15, 2005, the City Planning Commission authorized a zoning study of the Red Bank Road Corridor from the Interstate 71 ramps to the City border with City of Fairfax.

### **STUDY BOUNDARY:**

The study area extends from Columbia Township and Cincinnati boundary on the north to the intersection of Fair Lane and Red Bank Road on the south along the boundary between the City of Fairfax and Cincinnati.

### **PLANS:**

The Madisonville Industrial Corridor Urban Renewal Plan was approved and adopted by City Council on January 15, 1992 as amended by the City Planning Commission on January 10, 1992. The plan boundary included manufacturing zoned property from Madison Road south to the boundary with the City of Fairfax.

The Plan was instrumental in the recent redevelopment of the Corsica Hollow area southeast of the railroad overpass and Red Bank Expressway. Gorilla Glue Company building, another office building under construction and a future restaurant, will occupy the property.

### **COLUMBIA TOWNSHIP BOUNDARY SOUTH TO MADISON ROAD:**

From the boundary dividing Columbia Township and the City of Cincinnati, extending south along Red Bank Expressway the property on the west is zoned Manufacturing Limited (ML). This district includes the Seven Hills School. The Seven Hills School property is approximately 37 acres in size. Schools, private or public are a permitted use in an ML zone district. The ML district extends eastward to the east right-of-way line of Red Bank Expressway.

The Children's Home of Cincinnati is located immediately south of the Seven Hills School and occupies the northwest corner of Madison Road and Red Bank Road intersection. The Children's Home property is approximately 40 acres in size. This property is zoned Residential Multi-Family (RM-2.0). Residential Care, Assisted Living land uses are a conditional uses within a RM 2.0 zone district. The RM district extends eastward from the Children's Home property to the east right-of-way line of Red Bank Expressway.

The property located at the northeast corner of Madison Road and Red Bank Expressway is zoned Single Family (SF-10). The property is owned by the Cincinnati Board of Education and is the location of the pre-kindergarten to eighth grade John P. Parker School. The school is situated on 32 acres of land. Schools, public or private are a conditional use in all single-family districts. In addition, along Anderson Place there are 25 residences that are within the SF-10 zone district.

**MADISON ROAD SOUTH TO RAIL ROAD OVERPASS:**

The current zoning for property along Red Bank Expressway from Madison Road south to the railroad overpass is Commercial General Auto (CG-A) and Manufacturing General (MG).

**Manufacturing General (MG):**

On the east side of Red Bank Expressway, east of Old Red Bank Road and south of Madison Road is a MG district occupied primarily by Nutone, Inc. This company is a manufacturer of central cleaning systems, lighting fixtures and heaters. This property is approximately 28 acres in size.

On the west, south of Madison Road and at the terminus southern terminus of Charlemar Drive is a MG district occupied by Integra Life Services Corp, Schaerer Mayfield, manufacturers and distributors of medical devices. This property is approximately 9 acres in size.

Manufacturing and distribution uses are permitted in MG Districts.

**Commercial General Auto (CG-A):**

Along the east and west side of Red Bank Expressway frontage south of Madison Road commercial establishments are the dominant land use. This area is comprised of 19 parcels that include food markets, fuel sales, office, retail sales, indoor storage and government facilities. All uses are permitted within the CG-A zone district.

West of the intersection of Red Bank Expressway and Madison Road is an area that contains the standard commercial uses such as the Rally's fast food, Rainbow Car Wash and Jiffy Lube vehicle service establishments. In addition, there is the Kett Tool Company, manufacturer of specialty wood boring tools and accessories. All uses are permitted within the CG-A District.

The largest grouping of property consists of a drive-in theater formally own by National Amusements, Inc. and the former Thomson Learning, Inc. – South Western Publishing, Inc. properties totaling 29.41 acres. The Thomson Learning, Inc. – South Western Publishing, Inc. properties has been vacant and was sold to on August 30, 2005. The National Amusements, Inc. property was purchased on October 13, 2005 by Hyde Park Circle, Inc. The prior land use of drive-in theater, office, warehousing and distribution are permitted in a CG-A District.

The property owner Hyde Park Circle, Inc. has been issued a building permit for the renovation of the first of several buildings. The building permit for 5101 Madison Road was applied for on July 14, 2005 and issued on August 4, 2005. The initial work has commenced with site filling and building interior renovation.

The Department of Community Development and Planning has had two meetings with representatives of Hyde Park Circle, Inc., one in August and another in October 2005 prior to the current owner purchasing the property. Project financial assistance was discussed. The zoning study was not mentioned.

### **RAIL ROAD OVERPASS SOUTH TO CITY OF FAIRFAX BOUNDARY**

The current zoning south of the railroad overpass along either side of Red Bank Expressway and Red Bank Road south of Erie Avenue is Manufacturing General (MG). The land uses in this segment of the study area are permitted.

### **CONCLUSIONS:**

1. The National Amusements, Inc. and Thomson Learning, Inc. – South Western Publishing, Inc. was recently purchased by Hyde Park Circle, Inc., within the last 3 months with a CG-A zoning designation. Re-zoning to manufacturing would negatively affect developer's reuse of the property in regards to retail sales.
2. A building permit issued to Hyde Park Circle, Inc. on August 4, 2005 for the renovation of 5101 Madison Road suggests a desire to continue commercial use of the property. Re-zoning could make this a non-conforming use since retail sales are limited to 10,000 square feet in an MG District.
3. Existing land uses in the Red Bank Road Corridor are in conformance the CG-A and MG Districts regulations.

### **RECOMMENDATION:**

The staff of the Department of Community Development and Planning recommended that the City Planning Commission take the following action:

Find that no change in zoning within the Red Bank Road Corridor from the Interstate 71 ramps to the City boundary with the City of Fairfax is necessary at this time.

**Motion:** Ms. Hankner motioned approval of staff recommendation  
**Second:** Mr. Rager  
**Ayes:** Faux, Hankner, Mooney, Rager and Tarbell  
**Nays:** None, **motion carried**

**ITEM #7** A report and recommendation on a proposed zone change at 2437 West Clifton Avenue from the RMX Residential Mixed Multi-Family District to a CC-M Commercial Community Mixed District in the neighborhood of CUF.

*Caroline Kellem, Senior City Planner, presented this report*

**Petitioner:** John and Jenny Georgiton  
85 Donnelly Drive  
Fort Thomas. KY 41075

### **Adjacent Land Use and Zoning:**

South: RMX Residential Mixed 1-3 dwelling units  
SF-2 Single-family – 2,000 sf lots

East: CC-M Commercial Community Mixed  
RMX Residential Mixed 1-3 dwelling units

North: CC-M Commercial Community Mixed  
West: CN-P Commercial Neighborhood Pedestrian

**Staff Conference:** The Planning Division staff held a public conference on this request on Friday September 30, 2005. The petitioner, two neighboring property owners and one representatives of the CUF Community Council attended. All three-community people expressed the following concerns regarding the zone change:

1. Concern that the property would be used for a multi-level parking garage.
2. Concern that the business district and commercial uses are slowly creeping into the residential area and eliminating houses.
3. Concern that the property retain the current zoning as a buffer between the residential uses and the business uses.

Staff received one call from Marjorie Klusmeyer (2420 West Clifton Avenue) who opposed the zone change and wants the current zoning retained to serve as a buffer between the residential uses and the business uses.

**BACKGROUND:**

**Zoning History:** Prior to February 2004 the property at 2437 West Clifton Avenue was a B-4 General Business Zoning District. The surrounding area along West McMillan and West Clifton Avenue had the following zoning designations:

South: O-1 Suburban High-Density Office District

East: B-4 General Business District

**B-1 Neighborhood Business District**

North: B-4 General Business District

West: B-3 Retail Wholesale Business District  
R-4 Multi-Family Low-Density District

West McMillan Avenue is the main thoroughfare running through the neighborhood business district, which serves all of the surrounding communities. This property is one of many surface parking lots that serve the business district.

**Existing Use:** The property at 2437 West Clifton is currently used as a surface parking lot.

**Proposed Use:** The petitioner, John and Jenny Georgiton plan to continue to use the property as a surface parking lot and they may consider other commercial uses.

During the Zoning Code rewrite process, this property was rezoned from B-4 to RMX. This new zoning designation is not consistent with the current use nor the proposed future use (as a potential parking garage) as set forth in the 2001 Clifton Heights/UC Joint Urban Renewal Plan adopted by City Council.

The current use of the property is surface parking with 35 parking spaces for the adjacent commercial structures. The applicant also owns 203-207 West McMillan. It was explained to the applicant that the property was rezoned to RMX because the new zoning designation would act as a buffer between the commercial zoning of the business district to the north and the residential zoning to the south.

Currently, there are two adjacent surface parking lots to the east and northwest. Both of these properties are of comparable size and location, and both abut residential zoning. However, during the Zoning Code rewrite process these properties retained their commercial zoning. They are now zoned CC-M, like most of the Clifton Heights Business District along Calhoun and McMillan. The applicant is concerned that his property was rezoned residential, yet the other two parking lots kept their commercial zoning.

In addition, the City of Cincinnati has committed \$61,000 of CDBG money for a pre-development market study to construct a parking garage on the site. This would not be a permitted use under the current RMX zoning.

During the Zoning Code rewrite process, it was the intent of the Planning Commission and staff to apply the new zoning designations based on existing use of the land areas yet in this case a non-conforming use was created.

**FINDINGS:**

**Community Response:** The community is opposed to the re-zoning of the property to a commercial designation.

**ANALYSIS:**

Two surface parking lots in the Clifton Heights business district, which were previously zoned commercial, kept their commercial zoning during the zoning code rewrite process. It is not clear to staff why two parking lots kept their commercial zoning and one lot did not keep its commercial zoning. This surface parking does not serve as a buffer between the commercial properties to the north and the residential properties to the south. This property has been used for parking for several years and it is important that the City not create non-conforming uses. Also, a decision was made by the administration to use \$61,000 CDBG dollars to fund a parking study for this site. Recognizing the need for parking in the area, this parking study was funded to determine how much additional parking is needed in the business district.

**CONCLUSIONS:**

1. This property was rezoned residential while two adjacent surface parking lots remained commercial.
2. Previously, this property was zoned B-4 commercial. The new residential zoning limits the marketability and future development of this property.
3. The property has been used as a surface parking lot for several years.
4. The new RMX zoning designation is not consistent with the current use and creates a non-conforming use.
5. The CC-M zoning designation will not negatively impact the existing character of the surrounding area.
6. There are numerous commercial and parking uses throughout this West McMillan Avenue corridor.
7. The City has provided \$61,000 of CDBG money for a parking study on the site. Recognizing the need for parking in the area, this parking study was funded to determine how much additional parking is needed in the business district.

**RECOMMENDATION:**

The staff of the City Planning Department recommended that the City Planning Commission take the following action:

1. Approve a zone change for the property located at 2437 West Clifton Avenue from the RMX Residential Mixed Multi-Family District to CC-M Commercial Community Mixed District for the reasons that:
  - a) This property was rezoned residential while two adjacent surface parking lots remained commercial.
  - b) Previously, the property was zoned B-4 commercial zoning. This new residential zoning limits the marketability and future development of this property.
  - c) The property has been used as a surface parking lot for several years.
  - d) The new RMX zoning designation is not consistent with the current use and creates a non-conforming use.
  - e) The CC-M zoning designation will not negatively impact the existing character of the surrounding area.
  - f) There are numerous commercial and parking uses throughout this West McMillan Avenue corridor.
  - g) The City provided \$61,000 of CDBG money for a parking study on this site. Recognizing the need for parking in the area, this parking study was funded to determine how much additional parking is needed in the business district.

## **DISCUSSION**

Mr. Doug Barclay reiterated his statements from previous meeting that he supported changing the zone back to what it was originally.

Mr. John Georgiton, owner of 2437 Clifton Avenue, had pleaded his case at the December 2, 2005 meeting to the Commission for a CC-M Commercial Community Mixed District. He stated that if the zone change is not approved it will destroy him financially. He stated that he had invested over \$200,000 in the property and believed that his property should be the same zone as the surrounding businesses. His lot has been used as a surface parking lot for years. If by chance he decided to sell the property, he would like to sell it as a commercial property which is what it was zoned when he purchased it.

Ms. Sandra Wilson resident of 224 Atkinson stated that she is not against the zone change, but is afraid that a CC-M District would have a negative impact on the community in the future. She handed out pictures showing that the pedestrian-friendly nature of the area is already threatened by the amount of traffic alone during rush hour at McMillan and Calhoun Avenue. She had asked about the \$61,000 of City money which she thought was for facades.

Caroline Kellam informed the Commissioners that the City money would now be used for a parking study. Ms. Wilson informed the Commissioners that she and others would like to take part in that study.

Mr. Faux pointed out that there was an error in how the zoning map was drawn during the zoning rewrite project, and it needed to be corrected.

Mr. Barclay stated that the \$61,000 that Ms. Wilson was referring to was originally façade improvement money. It went back to Council and was resubmitted for a garage analysis to see if a project consisting of multi-level with retail on the first floor, was feasible.

Mr. Mooney asked why the zone was changed to RMX. Ms. Wilson responded stating that when the boundary line was drawn for the new development, they felt there should be a buffer between business and residential areas. The line was drawn behind the businesses on McMillan. Mr. Mooney questioned the reason for the zone change, and wanted to know if there were plans on hold for a project. The owner said that his reason for the request was because the zone change that resulted from the city-wide rewrite project decreased the value of his property.

Ms. Wuerstle submitted a letter from a Ms. Marjorie E. Klusmeyer, residing at 2420 Clifton Avenue, who opposed the zone change.

Ms. Hankner stated that she believed there was an error in rezoning this property that was originally in a B-4 commercial district.

**Motion:** Ms. Hankner motioned approval of staff recommendation  
**Second:** Mr. Rager  
**Ayes:** Faux, Hankner, Mooney, Rager and Tarbell  
**Nays:** None, **motion carried**

#### **ITEM #8 AND ITEM #9**

At the request of Chad Munitz, Economic Development Director of the City, items # 8 and 9 were moved to the end of the agenda to allow final negotiations to continue.

**The Commission discussed all agenda items that dealt with outdoor areas concurrently. The agenda items that addressed outdoor eating and drinking areas included item #10, item # 11 and item #12.**

**ITEM #10** Zoning Text Amendment for §1419-21. Limited or Full Service Restaurants and Drinking Establishments

**SUBJECT:** Proposed text amendment for §1419-21. Limited or Full Service Restaurants and drinking Establishments

#### **PURPOSE:**

To obtain input and direction from the Planning Commission on zoning text as it relates to the regulation of outdoor drinking areas and to ensure that all sections of the Code are consistent regarding the regulation of outdoor drinking areas.

#### **PROPOSED TEXT AMENDMENT:**

##### **§ 1419-21. Limited or Full Service Restaurants and /or Drinking Establishments.**

Outdoor ~~eating~~ areas of limited or full service restaurants or drinking establishments must be located, developed and operated in compliance with the following: The reference should just be “outdoor areas”

(a) **Location.** Outdoor areas on any public sidewalk or alley requires a revocable street privilege The proposed change is in conflict with an opinion issued by the Law Department stating that zoning does not regulate the city’s right-of-way.

(b) **Maximum Size.** The outdoor area may not exceed 25 percent of the indoor eating and drinking area, excluding other space not accessible by the public. Additional area requires conditional use approval pursuant to the procedures and criteria of Chapter 1445, Variances, Special Exceptions and Conditional Uses.

(c) **Barriers.** Decorative walls or fencing must enclose an outdoor ~~eating areas~~ area.



- (d) **Drinking Establishments.** Outdoor areas for drinking establishments may not be located closer than 300 feet to a residential use or district.
- (e) **Cooking Facilities.** Cooking facilities may not be located in outdoor ~~eating~~ areas.
- (f) **Entertainment.** Live entertainment, including the use of audio or visual equipment, may not be presented in outdoor areas ~~eating areas~~.
- (g) **Fixtures.** Furniture and fixtures provided for use in an outdoor ~~eating~~-area may consist only of movable tables, chairs, umbrellas, planters, lights and heaters. Lighting fixtures may be permanently affixed onto the exterior ~~front~~ of the building. All movable furniture and fixtures must be removed during the off-season. The placement of lighting is regulated by 1429-31, so it is unnecessary to include it here.
- (h) **Hours of Operation.** The use of outdoor-~~eating~~ areas is prohibited between 11 PM and 7 AM on ~~weekends~~ Friday and Saturday and 10 PM and 7 AM ~~weekends~~ on all other days.
- (i) **Breweries and Wineries.** Beer and wine production accessory to a limited or full service restaurant is limited to an area that may not exceed 10,000 sq. ft and may not produce any objectionable odor, dust or fumes.

**ITEM #11** Zoning Text Amendment for §1409-07. Use Regulations – Commercial Sub districts

**PURPOSE:**

To obtain input and direction from the Planning Commission on zoning text as it relates to the regulation of outdoor drinking areas and to ensure that all sections of the Code are consistent regarding the regulation of outdoor drinking areas.

**PROPOSED TEXT AMENDMENT:**

**Schedule 1409-07: Use Regulations - Commercial Subdistricts**

Use Classifications CN-P CN-M CC-P CC-M CC-A CG-A Additional Regulations

**Commercial Uses**

Eating and drinking establishments

Drinking establishments ~~L6, L13, L14~~ L6, L13, L14 ~~L6-L14~~ P L14 P P See § 1419-21

Restaurants, full service L6, L13 L6, L13 L6 P P P See § 1419-21

Restaurants, limited L6, L13 L6, L13 L6 P P P See § 1419-21

L14 Conditional use approval required for outdoor areas greater than 25 percent of the indoor eating and drinking areas, for outdoor areas located less than 300 feet from a residential use or zone, and or for the provision of outdoor entertainment.

**ITEM #12** Zoning Text Amendment for §1401-01-O6 Outdoor Eating or Drinking Area Definition

**PURPOSE:**

To obtain input and direction from the Planning Commission on zoning text as it relates to the regulation of outdoor drinking areas.

## **PROPOSED TEXT AMENDMENT:**

### **§ 1401-01-06. Outdoor Eating or Drinking Area**

A porch, patio, deck or other area used for consumption of food and/or beverages by the public which is not enclosed within the interior building walls of a limited restaurant, full service restaurant, or a drinking establishment and which may or may not have a solid roof cover.

### **§ 1401-01-0607. Outdoor Storage.**

“Outdoor storage” means the keeping of commercial goods, equipment and raw materials in an open lot.

**Item #12 was removed from the agenda by the Law Department.**

## **DISCUSSION**

Julia Carney, Assistant City Attorney, provided a summary of the proposed changes in Schedule §1409-07 for drinking and eating establishments.

Mr. Rager pointed out that the changes were different from what was previously discussed at the 12/2/05 meeting. He went on to state that at the meeting held the previous Friday, the Commission wanted to be more accommodating and the amendments currently in front of the Commission were more restrictive. The Commission felt that the current text amendments were more restrictive than the previous text amendments. Ms. Carney said that the reason for the restrictions was to protect the residents that were living within commercial districts.

Ms. Hankner stated that it was disturbing that residential “uses” were now included in the text amendment. She said that anyone who had a residential use in a commercial district knows that there are risks that come along with living in a commercial district. She saw many problems with the word “use” being included in L-14.

The Planning Commission felt that the new changes to the amendments would create problems for future business owners and for those commercial businesses that already exist. They gave examples of different areas that the changes would affect such as Mt. Adams, Northside, and even Downtown Cincinnati. Mr. Rager said that even though the majority of Downtown is commercial, there are still residents who live in the area. He pointed out that the change would require many conditional use applications to be submitted.

Mr. Mooney commented that according to the new changes, anyone with outdoor entertainment within 300 ft. of residential uses would have to get a conditional use approval. He asked what the definition of entertainment was.

Mr. Faux passed out his own version of the text amendment for the zoning code. He said that his version was more lenient than what the Law Department had proposed. The changes proposed by the Law department were too restricted. He indicated that 300 ft. was too great of a distance separation from a residential boundary line and suggested that 150 ft. would be better. He also stated that outdoor entertainment should be 150 ft from a residential district boundary. He felt that if an outdoor area was not near a residential area, there should be no restrictions on the hours of operations.

Dottie Carmen, of the Law Department, commented that the 150 ft. that Mr. Faux was proposing to imposed was too small of a distance. She lived a little further than that from a bar that operated an outdoor establishment. She said that the noise was horrendous and affected her sleep. Mr. Tarbell said

that there are many examples where outdoor establishments did work in close proximity to residential areas.

Mr. Rager pointed out that the reason they were even discussing this zoning text amendment was because the Zoning Board of Appeals said that the Zoning Code did not permit outdoor drinking areas.

Mr. Faux commented that he was mistaken when he stated that inadvertently the Commission had omitted outdoor eating/drinking establishments from the new Zoning Code. He was informed that when the new Zoning Code was adopted, the language was written to prohibit outdoor drinking establishments citywide. He stated that by error a footnote that is part of §1409-7 was left in the Zoning Code. It stated that a business could not have outdoor entertainment and because of this footnote the Building Department interpreted that to mean that there could be outdoor drinking areas with no regulations that would control where, when, how or how large these outdoor drinking areas could be. The Zoning Board Appeals decided that the footnote was an error and that the correct interpretation is as it stands today is that no outdoor areas are permitted for drinking establishments. Mr. Faux said that the Commission wanted to correct that mistake.

Mr. Rager stated that even though the Commission's purpose was to make the zoning codes more liberal for outdoor eating and drinking establishments, what the Law Department proposed was more restrictive than what was presented at the previous meeting.

Mr. Ben Klopp of 949 Pavilion St. in Mt Adams, stated that when he purchased his property in a commercial district he knew what would come along with the purchase. He enjoys the interactions of the commercial district and he felt that the City needs more areas like Mt Adams, Oakley, and Hyde Park. Even though the new Zoning Code would not affect his business, he feels that zoning is one of the most underrated parts of city planning. The City needs to focus on more mixed-use districts geared toward the young professionals between ages 23-35 years old to keep them in the City. He implored the Commission to be pro-business and pro-entertainment and keep the City of Cincinnati as attractive and inviting as possible.

Mr. Mooney asked that when the speakers come to address the Commission, they include comments on the hours of operation in their discussion .

Mr. Tom Ford, from the Greater Cincinnati Hospitality Association, agreed that the 300 ft. rule would increase the number of applications for conditional use permits. He pointed out that most people do not start their entertainment on the weekend until 11-11:30 pm and that the hours of operation were too restrictive. He explained that most businesses are operating under liquor licenses, which have a rule of 1:00 am - 2:30 am. He implored the Commission to make the Zoning Code changes attractive to professionals and businesses, that would help to keep people in the City. He believed there was a need for businesses to get along with their neighborhoods because the people in the neighborhoods are their customers.

Mr. Greg Wiley spoke for the 35 year and older crowd who may go to a function downtown and afterwards walk to an outdoor eating and drinking establishment late at night. He also felt that the proposed zone changes are not new-business friendly and would affect many businesses financially.

Mr. Carl Ueblicher commented that he felt that having no control was anti-family and anti-residents. He felt the residential use in limitation L-14 was too harsh compared to using residential "zone". The 300 ft. distance he felt was not too great of a distance because the problem is that noise travels. The regulation does not prohibit the outdoor area, it just requires a conditional use approval to be obtained. He had a problem with the entire section (d) being eliminated. He said that there might be special circumstances that need to be considered and section (d) would give the hearing examiner a measure for all parties. He stated that §1401-06, the definition for outdoor areas, appeared to have been trashed. He felt that was a big mistake. The proposed text gave a clear definition of an outdoor area. If things are

not clearly defined, the Building Department may approve or misconstrue that an outdoor eating area may be constructed without constraints and that is a problem to residents.

Hyde Park businesses have eating and drinking areas that close at 10-11pm and it is no problem in Hyde Park. He felt throwing out the time limits entirely would create huge problems for all neighborhoods. He asked that the Commissioners strike out the word “live” under entertainment because a CD playing is not live but it can have a negative impact on surrounding neighbors.. He commented that there is no §1429. Ms. Carmen indicated that was a typographical error. He said that the City needed to establish administration regulations for a revocable street privilege that would apply some control to outdoors area that affects residential zones.

Ms. Carmen pointed out that the guidelines for conditional use approval were address under §1435 and the hearing examiner uses those particular guidelines in determining if a conditional use permit should be granted.

The Commissioners agreed with Ms. Hankner that Mr. Faux’s version of the text amendment should be used, instead of the 300 ft. distance separation that the Law Department had proposed. They felt 150 ft. was more appropriate. Also under §1419-21(f) the commissioners felt that the word “live” next to entertainment should be removed.

Pat Carroll representing the License Beverage Association spoke next. He stated that his membership is opposed to all of the amendments.

Mr. Rager, Mr. Faux and Ms. Hankner all agreed that the distance separation reference to “residential uses” had to be removed. Instead, the reference should be made to a “residential district boundary” in both §1409-07 and §1419-21. The Commission also requested that the word “live” be removed from the entertainment section and that the extension of the hours of operation should be allowed with a conditional use approval. Also they wanted the definition of outdoor eating and drinking areas, §1401-01-06 to be put back on the next agenda for consideration. The Commission requested that these changes be made and brought back to the Planning Commission on December 16, 2005. Ms. Hankner requested that staff research the distance separations used by other cities.

**ITEM #8**      A report and recommendation on a zone change request for property along Pete Rose Way in the Central Business District from Downtown Development (DD) to Planned Development (PD).

*Jen Walke, City Planner, presented this item.*

**Owner:**

Evan Andrews  
Montgomery Inn, Inc.  
9406 Main Street  
Cincinnati, Ohio 45242

**Agent:**

Douglas J. Hine  
Miller-Valentine Group  
9435 Waterstone Blvd.  
Cincinnati, Ohio 45249

**Owner:**

City of Cincinnati  
801 Plum Street  
Cincinnati, Ohio 45202

**BACKGROUND:**

Montgomery Inn, Inc. owns property on the south side of Pete Rose Way that contains the Montgomery Inn Banquet Hall and a surface parking lot. Montgomery Inn, Inc. has planned a mixed-use development on the site with residential units with views of the river and the skyline and with public thoroughfares connecting the L&N Bridge (a.k.a. the Purple People Bridge) to Sawyer Point, the Central Business District and Lytle Park. To achieve the desired level of public connectivity, Montgomery Inn, Inc. is requesting a zone change from Downtown Development District (DD) to Planned Development District (PD) for their development site as well as the site to the north of the development which is owned by the City of Cincinnati and contains a surface parking lot (Exhibit A). The proposed development on the south side of Pete Rose Way is permissible under the current zoning, but the applicant as well as the City desires that a PD be established with development standards for both the north and south sides of Pete Rose Way. This will ensure that development of both parcels is compatible. The total size of the proposed zone change is approximately 6.2 acres.

The Concept Plan for the site on the south side of Pete Rose Way promotes a mixed-use development and includes 140 condominium units, 50,000 square feet of commercial space with two restaurants a health club/spa, residential amenities such as an outdoor pool and patio, and public and private parking opportunities. The Concept Plan includes a two and a half-level parking garage with two levels completely below ground. The garage will provide 435 parking spaces, 200 for public use and 235 dedicated to the residential units in the development. A bi-level public plaza will include pedestrian connections to Pete Rose Way, the L&N Bridge, Sawyer Point and the Central Business District. Two towers will be built on the site. Both are to contain retail/restaurant space in the storefronts and residential condominiums above. The east tower is to be a maximum of 12 floors above street level and the west tower is to be 9 floors above street level for maximum height limitation of 655 feet above sea level (ASL) for the south site. The actual building area of 570,000 square feet is less than the maximum allowable Floor Area Ratio. There will be approximately 300,000 square feet of residential space with approximately 2,000 square feet for each unit.

The Concept Plan for the site on the north side of Pete Rose Way (which is owned by the City of Cincinnati) is currently restricted by an easement owned by the Ohio Department of Transportation (ODOT). The easement gives ODOT control over the site that was formerly used as a highway entrance to the bridge. With the exception of a surface parking lot, the site is undevelopable with the easement. ODOT will not release the easement at this time due to pending transportation plans. In the event that the easement is ever released, the applicant would like to ensure that development on this site is compatible with the proposed development on the south side of Pete Rose Way. The Concept Plan calls for the following controls to complement the project's design concepts:

- 1) Promote pedestrian connections along the western extent of the property;
- 2) Limit building height to 10 feet above the Fort Washington Way ramp in order to preserve views of the downtown skyline;
- 3) Provide retail space along Pete Rose Way with no garage structure visible from public rights-of-way; complement plaza of River Crossings with open areas or setbacks;
- 4) Complement architectural character of adjoining properties including River Crossings, in materials, fenestration and streetscape treatment; and
- 5) Make 200 parking spaces available after 5pm on weekdays, all weekend hours and a minimum of 50 parking spaces on weekdays for restaurant and retail patrons of River Crossings (parking rates are to be comparable to other City owned parking facilities).

**EXISTING CONDITIONS:****Adjacent Land Use and Zoning:**

**North:** DD-C, Fort Washington Way

**East:** RF-R, Sawyer Point

**South:** DD-B Sawyer Point

**West:** DD-C and DD-B, parking garage and One Lytle Place residential units

**Existing Plans:**

The Coordinated City Plan, Volume 2 (December, 1980) recommends high-density residential development (page 31 and 40) and public/semi public uses for the south site. The Cincinnati 2000 Plan identifies the south site as Riverfront East and calls for “mixed use development to include additional high-density housing, hotel, office, retail and structured parking in this choice area which will enjoy the splendid view of the river, proximity to parks, the Stadium and Coliseum, and easy access to the downtown” (Amendment to the Cincinnati 2000 Plan on 12/19/01)

No recommendations were made for the north site because it was and is currently being used for transportation purposes.

**CITY COMMENT:**

On November 15<sup>th</sup>, 2005 a Pre-development Conference was held to obtain input from City departments on the proposed development. Concerns were expressed regarding accessibility of emergency vehicles, trucks and buses to Sawyer Point, and pedestrian linkages to the L&N Bridge. The Department of Transportation and Engineering requires a traffic impact study to be done before final development plans can be approved. The applicant has indicated that staff concerns will be addressed in the Final Development Plan.

**PUBLIC COMMENT:**

Department of Community Development and Planning staff conducted a public conference on this zone change request on November 18, 2005. Ed Diller, an attorney for an adjacent property owner, expressed the following concerns:

1) The zone change application as submitted is defective because it includes property not controlled by applicant, 2) The application is incomplete because at the time of submission it did not include preliminary reviews of sewers, water and drainage, 3) It is illegal to spot zone property and to regulate design characteristics of surrounding property, 4) City is decreasing the value of the north site by imposing height limitations.

City staff's response to these concerns are as follows:

1) City have no objection to the inclusion of city-owned property in application, 2) The application was complete upon submission to Planning Commission, 3) Proposed change is not spot zoning because it exceeds the minimum size requirements of a PD, and design characteristics of surrounding properties are not being regulated, all regulations are applicable to the PD property only, 4) City is permitted to decrease the value of their own property and in this case the decrease of value will potentially increase the value of adjacent property.

**ANALYSIS OF PROPOSED CHANGE:**

The size of the proposed change is 6.182 acres which exceeds the minimum requirements set by Section 1429-05 of the Cincinnati Zoning Code of two contiguous acres. Evidence of ownership has been provided.

Per Section 1429-11, Planning Commission must find the following:

- 1) The PD concept plan and development program statement are consistent with applicable plans and policies and is compatible with surrounding development.

Analysis: The concept plan is consistent with applicable plans, which promote high-density residential and mixed- use development for the south site.

- 2) The PD concept plan and development program statement enhance the potential for superior urban design in comparison with the development under the base district regulation that would apply if their plan were not approved

Analysis: Pedestrian and visual connectivity with the north site could not be achieved under existing zoning districts.

- 3) Deviations from the base district regulations applicable to the property at the time of PD application are justified by compensating benefits of the PD concept plan and development program statement

Analysis: Theoretically higher sale prices of residential units on the south side of Pete Rose Way will compensate for the height limitations of development on the north side of the street.

- 4) The PD concept plan and development program statement include adequate provisions for utility services, refuse collection, open space, landscaping, buffering, pedestrian circulation, traffic circulation, building design and building location.

Analysis: The concept plan addresses all issues. Utility services and refuse collection are located in the rear of the development on parking levels 1 and 2 and the first floor and explained in the attached letter dated November 21, 2005. Open/Public Space is located on a bi-level public plaza on the first and second floors. Landscaping is included along Pete Rose Way and along the base of Fort Washington Way on the north site. Further buffering is not needed due to the compatibility of surrounding land uses. Pedestrian circulation patterns are outlined in the Concept Plan, on page G120. Traffic circulation is outlined by layout of parking garage, but a traffic study is required by the Department of Transportation and Engineering to determine specifics. Building design and building location are illustrated in the Concept Plan, on pages G000-G303.

The development site to the south of Pete Rose Way is zoned DD-B. The proposed development on the south side of Pete Rose Way does not require a PD District in order to be built as designed. The PD district is necessitated by the controls to the north side of Pete Rose Way. The restrictions placed on the north site necessitate the PD zoning designation by promoting coordinated development, encouraging public space and access via the pedestrian thorough-fares, light (to the south development site by limiting height of north development) and amenities (such as parking).

The development site on the north side of Pete Rose Way is zoned DD-C which promotes office, residential, commercial and public/semi-public uses. Current zoning permits 750 feet ASL or approximately 20 stories. Height restrictions on north site will limit development to approximately 5 floors above street level. Imposing height limitations on the north site will ensure visual connectivity from the development on the south site.

#### **CONCLUSION:**

1. The proposed PD meets the purpose requirements of establishing a PD.
2. The proposed PD meets the area requirements of a PD district.
3. High-density residential development of the south site is promoted in the Coordinated City Plan, Volume 2 and the Cincinnati 2000 Plan.
4. The proposed PD is consistent with existing plans and is compatible with surrounding development (L&N Pedestrian Bridge, Sawyer Point, parking garage) by promoting pedestrian traffic in and around the area.

5. The PD program statement ensures pedestrian and visual connectivity that are not mandated under the existing zoning designations.
6. The PD will ensure coordinated and compatible development on the north and south sides of Pete Rose Way.

**RECOMMENDATION:**

Department of Community Development and Planning staff recommended that City Planning Commission take the following actions:

**ACCEPT** the Concept Plan for the River Crossings PD and

**APPROVE** the zone change request for property along Pete Rose Way owned by the Montgomery Inn, Inc. and the City of Cincinnati from DD to PD in the Central Business District finding, per Section 1429-11 that the following circumstances apply:

- 1) The PD concept plan and development program statement are consistent with applicable plans and policies and is compatible with surrounding development;
- 2) The PD concept plan and development program statement enhance the potential for superior urban design in comparison with the development under the base district regulation that would apply if their plan were not approved;
- 3) Deviations from the base district regulations applicable to the property at the time of PD application are justified by compensating benefits of the PD concept plan and development program statement; and
- 4) The PD concept plan and development program statement includes adequate provisions for utility services, refuse collection, open space, landscaping, buffering, pedestrian circulation, traffic circulation, building design and building location.

**Discussion**

Mr. Faux stated that this project could be done without the zone change to a PD designation. Jen Walke replied that the proposed development on the south side of Pete Rose Way does not require a PD District in order to be built as designed. The PD district is necessitated by the controls to the north side of Pete Rose Way. The restrictions placed on the north site necessitate the PD zoning designation to promote coordinated development, to encourage public space and access via the pedestrian thorough-fares, to preserve light to the south development site by limiting height on the north site and to encourage amenities such as parking.

Chad Munitz explained that a compromise had been reached and the restrictions on the North side of the site were to be as follows:

- 1) The height on the north side of the site is to be limited to 5 stories and the building is not to exceed a total square footage of 125,000 sf.
- 2) Changes to the development plan resulting in less than 75% residential use in the project must go back to the Planning Commission for approval.
- 3) 50 parking spaces on the north site must be available evenings and weekends to the public at fair market price.

Dennis Back, an architect representing John Anderson, the owner of 310 Culvert, stated that his client like the openness of Ft. Washington Way. He was in support of the Rivercrossing PD with one exception on the City property. He would like the sale of the City property to include a height restriction that would limit construction to 10 feet above Ft. Washington Way.



Doug Hines of the Miller Valentine group stated that one of the changes that was negotiated included a maximum number of square feet for the building so that the building would not cover the entire site with a 5-story building.

**Motion:** Mr. Mooney motioned approval of the staff recommendation with the conditions outlined by Chad Munitz  
**Second:** Ms. Hankner  
**Ayes:** Faux, Hankner, Mooney, Rager and Tarbell  
**Nays:** None, **motion carried**

**ITEM # 9** A report and recommendation on the sale of City-owned property located south of the Gregory Center Banquet Hall on Pete Rose Way, including part of Friendship Street, which is no longer needed for municipal or street purposes, to Montgomery Inn, Inc., and, in exchange, accepting .330 acres of land on the north side of Pete Rose Way.

*Jen Walke, City Planner, presented this item.*

**BACKGROUND:**

The City owns a parcel of real estate south of the Gregory Center Banquet Hall on Pete Rose Way, which includes part of Friendship Street that is currently leased to the Montgomery Inn, Inc. for use as a parking lot for the Gregory Center Banquet Hall. Montgomery Inn, Inc., owns .330 acres of land on the north side of Pete Rose Way adjacent to and west of the City-owned L&N Loop property.

Montgomery Inn, Inc., has asked to purchase the City Property in order to construct a mixed-use project on an assembled site that will consist of the Gregory Center Banquet Hall and the City Property.

The City has determined that the Montgomery Inn Property can be assembled with the L&N Loop for use as public parking. An appraisal performed by Real Estate Services determined that the fair market values of the City Property and the Montgomery Inn Property are equivalent.

**RECOMMENDATION:**

Department of Community Development and Planning staff recommended that the City Planning Commission take the following action:

**AUTHORIZE** the sale of City-owned property located south of the Gregory Center Banquet Hall on Pete Rose Way, including part of Friendship Street, which is no longer needed for municipal or street purposes, to Montgomery Inn, Inc., and, in exchange, accepting .330 acres of land on the north side of Pete Rose Way.

**Discussion**

A representative of Miller Valentine stated that the developer must comeback before Commission with the final plan and elevations for the project.

**Motion:** Ms. Hankner motioned approval of staff recommendation  
**Second:** Mr. Mooney  
**Ayes:** Faux, Mooney, Rager, Hankner and Tarbell  
**Nays:** None, **motion carried**

**ITEM #13** Zoning Text Amendment for §1409 Commercial District

*This item was held for the December 16, 2005 Planning Commission meeting because several pages were missing from the staff report.*

**OTHER BUSINESS**

Ms. Hankner made a motion that staff prepare a zoning text amendment that would address the issues for determining how the square footage of a building or establishment is calculated. Specifically she wanted to prevent future interpretations from being made that would allow for situations similar to the recently approved permit for the Northside Walgreens.

**Motion:** Ms. Hankner motioned for staff to develop the new text amendment  
**Second:** Mr. Mooney  
**Ayes:** Faux, Hankner, Mooney, Rager and Tarbell  
**Nays:** None, **motion carried**

Ms. Wuerstle asked the Commission if they would like to tour the Stetson Square project. The Commission directed Ms. Wuerstle to set the tour for after one of the Commission meetings in January 2006.

Adjourned

**Motion:** Ms. Hankner motioned adjournment.  
**Second:** Mr. Rager  
**Ayes:** Faux, Hankner, Mooney, Rager and Tarbell  
**Nays:** None, **motion carried**

---

Margaret A. Wuerstle, AICP  
Chief Planner

---

Caleb Faux, Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_